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IN THE

# Supreme Court of the United States

October Term, 1978.

No.

78 - 155

Philadelphia Newspapers, Inc., The Associated Press, Central States Publishing, Inc., The Pennsylvania Newspaper Publishers Association, The Pennsylvania Society of Newspaper Editors, and The Society of Professional Journalists, Sigma Delta Chi, Greater Philadelphia Chapter,

Appellants,

v.

The Honorable Domenic D. Jerome, Judge of the Court of Common Pleas of Delaware County, Pennsylvania

and

The Society of Professional Journalists, Sigma Delta Chi, Greater Philadelphia Chapter, The Pennsylvania Newspaper Publishers Association and The Pennsylvania Society of Newspaper Editors,

Appellants,

v.

The Honorable Lawrence A. Brown, Judge of the Court of Common Pleas of Montgomery County, Pennsylvania

and

Montgomery Publishing Company,

Appellant,

v.

The Honorable Lawrence A. Brown, Judge of the Court of Common Pleas of Montgomery County, Pennsylvania

and

The Society of Professional Journalists, Sigma Delta Chi, Greater Philadelphia Chapter, The Pennsylvania Newspaper Publishers Association, and The Pennsylvania Society of Newspaper Editors,

Appellants,

v.

The Honorable Robert W. Honeyman, Judge of the Court of Common Pleas of Montgomery County, Pennsylvania

and

Montgomery Publishing Company,

Appellant,

v.

The Honorable Robert W. Honeyman, Judge of the Court of Common Pleas of Montgomery County, Pennsylvania.

Appeal From the Judgment of the Supreme Court of Pennsylvania.

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**REFERENCE TO OPINIONS BELOW.**

The court below initially rendered no opinions.

On appeal, this Court vacated and remanded for clarification of the record. *Philadelphia Newspapers, Inc. v. Jerome*, 54 L. Ed. 2d 506 (1978) (*per curiam*). A copy of the Court's Opinion is appended hereto as Exhibit 1.

The Opinion of the Pennsylvania Supreme Court following remand is not yet reported. A copy of that opinion is appended hereto as Exhibit 2.

**STATEMENT OF GROUNDS FOR  
JURISDICTION.**

This Court has jurisdiction over these appeals pursuant to 28 U. S. C. § 1257(2) in that these appeals are taken from an Order of the Supreme Court of Pennsylvania reinstating judgments previously vacated by this Court, which judgments uphold certain Pennsylvania Rules of Criminal Procedure against claims of repugnancy to the Constitution of the United States, specifically, the First, Fifth, Sixth, and Fourteenth Amendments thereto. The Pennsylvania Rules of Criminal Procedure are the equivalent of statutory enactments by the Legislature, have the force and effect of law, and all laws inconsistent with the Rules are deemed suspended. Constitution of the Commonwealth of Pennsylvania, Article V, § 10(c). *Commonwealth v. Levesque*, 97 Dauph. 475 (Pa. C. P. Dauph. 1975); *Gonzales v. Procaccio Truck. Co.*, 1 P. C. R. 24, 28-29 (C. P. Phila. 1978).

The proceedings below were originally brought to gain access by the press and public to pretrial suppression hearings in three separate criminal proceedings. The Pennsylvania Supreme Court in 1977 denied Petitions seeking vacation of the trial courts' orders closing pretrial hearings and sealing and impounding all papers, documents, and records filed in the cases of *Commonwealth of Pennsylvania v. W. A. "Tony" Boyle*, Court of Common Pleas of Washington County, Pennsylvania, Nos. 650A, 650B, and 650C March Session 1974; *Commonwealth of Pennsylvania v. Palmer*, Court of Common Pleas of Montgomery County, Pennsylvania, No. 149-77; and *Commonwealth of Pennsylvania v. Phillips*, Court of Common Pleas of Montgomery County, Pennsylvania, No. 5060-76. Following appeals therefrom, this Court, by decision and Order of January 9, 1978, vacated the orders of

the Pennsylvania Supreme Court and remanded these cases to that court to clarify the record. 54 L. Ed. 2d 506 (1978). On April 28, 1978, the Pennsylvania Supreme Court reinstated its prior determination holding that "the challenged Rules and orders are closely tailored to protecting both the constitutional right of defendants to a fair trial and the public's interest in the fair and efficient administration of criminal justice." Ex. 2, p. 51.

A Notice of Appeal was filed on July 26, 1978 in the Supreme Court of Pennsylvania. The Notice of Appeal is appended hereto as Exhibit 3. This single Jurisdictional Statement is filed on behalf of all appellants in their appeal from the Order of the Supreme Court of Pennsylvania. See Rule 15, 3 of this Court.

The text of the Pennsylvania Rules of Criminal Procedure validity of which is challenged by this appeal is as follows:

*Rule 323. Suppression of Evidence*

(a) The defendant or his attorney may make application to the court to suppress any evidence alleged to have been obtained in violation of the defendant's constitutional rights.

(b) Unless the opportunity did not previously exist, or the interests of justice otherwise require, such application shall be made only after a case has been returned to court and not later than ten days before the beginning of the trial session in which the case is listed for trial, except that in any judicial district having continuous trial sessions said application shall be filed not later than ten days before the day the case is listed for trial. If timely application is not made hereunder, the issue of the admissibility of such evidence shall be deemed to be waived.

(c) Such application shall be made to the court of the county in which the prosecution is pending.

(d) The application shall state specifically the evidence sought to be suppressed, the specific constitutional grounds rendering the evidence inadmissible, and shall state with particularity the facts and events in support thereof.

(e) Upon the filing of such application, a judge of the court shall fix a time for hearing, which may be either prior to or at trial, and which shall afford the attorney for the Commonwealth a reasonable opportunity for investigation and answer, and shall enter such interim order as may be appropriate in the interests of justice and the expeditious disposition of criminal cases.

(f) *The hearing, either before or at trial, shall be held in open court unless defendant, by his counsel, moves that it be held in the presence of only the defendant, counsel for the parties, court officers and necessary witnesses. In any event, the hearing shall be held outside the hearing and presence of the jury. In all cases the court may make such order concerning publicity of the proceedings as it deems appropriate under Rules 326 and 327.*

(g) *A record shall be made of all evidence adduced at the hearing. The clerk of court shall impound the record and the nature and purpose of the hearing and the order disposing of the application shall not be disclosed by anyone to anyone except to the defendant and counsel for the parties. The record shall remain thus impounded unless the interests of justice require its disclosure.*

(h) The Commonwealth shall have the burden of going forward with the evidence and of establishing the admissibility of the challenged evidence. The defendant may testify at such hearing, and, if he does so, he does not thereby waive his right to remain silent during trial.

(i) At the conclusion of the hearing, the judge shall enter on the record a statement of findings of fact and conclusions of law as to whether the evidence was obtained in violation of the defendant's constitutional rights, and shall make an order granting or denying the relief sought.

(j) If the court determines that the evidence is admissible, such determination shall be final, conclusive and binding at trial, except upon a showing of evidence which was theretofore unavailable, but nothing herein shall prevent a defendant from opposing such evidence at trial upon any ground except its admissibility. (emphasis supplied).

*Rule 326. Special Orders Governing Widely-Publicized or Sensational Cases*

In a widely-publicized or sensational case, the Court, on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the Court may deem appropriate for inclusion in such an order. In such cases it may be appropriate for the

court to consult with representatives of the news media concerning the issuance of a special order.

19 Pa. S. (1977) (Rules Supp.)

Pursuant to the provisions of 28 U. S. C. § 2103, appellants ask the Court to regard this Jurisdictional Statement as a Petition for Writ of Certiorari in the event it is determined that this appeal has been improvidently taken.

**QUESTIONS PRESENTED.**

1. (a) Are the provisions of Pennsylvania Rules of Criminal Procedure 323(f) and (g), which require the closing of a pretrial hearing in a criminal case at the request of a defendant and mandate the impoundment of all records of the hearing, void on their face because they deny, in violation of the First, Fifth, Sixth, and Fourteenth Amendments, the public's right to be contemporaneously informed about court proceedings?

(b) Do the Rules effecting such denial without provision for hearing and with no showing as to (a) the nature and extent of pretrial news coverage and the potential for prejudice to the criminal defendant; and (b) whether other measures could protect the defendant's right to a fair trial without obliteration of the rights of the press and public violate those constitutional provisions?

2. Are Pennsylvania Rules of Criminal Procedure 323 (f) and (g) on their face and 326, as applied in this case, pursuant to which the trial courts entered orders which (i) closed their courtrooms; (ii) sealed official court records; and (iii) prohibited parties, witnesses, attorneys, and others from communicating with the press, thus totally prohibiting, with no hearing or showing of potential prejudice, publication of any news concerning important criminal trials and pretrial proceedings, void in that they effect impermissible prior restraints on publication in violation of the First and Fourteenth Amendments?

## STATEMENT OF THE CASE.

**I. Philadelphia Newspapers, Inc., et al.<sup>1</sup> v. The Honorable Domenic D. Jerome, Judge of the Court of Common Pleas of Delaware County.**

This action arose from proceedings in the re-trial of W. A. "Tony" Boyle, former President of the United Mine Workers of America, in the Court of Common Pleas of Delaware County, Pennsylvania. Mr. Boyle's first trial, which resulted in a conviction for the execution-style slayings of a rival for union office and members of his family, received nationwide attention. The conviction was reversed by the Pennsylvania Supreme Court, and a new trial ordered.<sup>2</sup> On March 28, 1977, during pretrial proceedings on remand, the trial court entered a comprehensive order prohibiting parties, attorneys and their associates, all public officials, and others from, *inter alia*, releasing extrajudicial statements relating to the case, commenting upon any evidence, and disseminating any documents the admissibility of which might have to be determined by the court. On May 2, 1977, "all papers, documents and records filed and to be filed in this matter"

1. The parties below were:

Philadelphia Newspapers, Inc., publisher of *The Philadelphia Inquirer* and *Philadelphia Daily News*, newspapers of general circulation throughout Pennsylvania and the Delaware Valley region; The Associated Press, a New York non-profit association which is the largest gatherer of news in the United States; Central States Publishing, Inc., publisher of *The Delaware County Times* of Delaware County, Pennsylvania; The Pennsylvania Newspaper Publishers Association; The Pennsylvania Society of Newspaper Editors; and The Society of Professional Journalists, Sigma Delta Chi, Greater Philadelphia Chapter, which are professional associations of Pennsylvania journalists.

2. *Commonwealth v. Boyle*, 470 Pa. 343, 386 A. 2d 661 (1977).

were ordered sealed and impounded.<sup>3</sup> Also on May 2, 1977, the trial court orally ordered the courtroom cleared of all representatives of the press and public and thereafter commenced hearings on defense suppression motions behind closed doors. All of these orders were entered at the request of the defense and with the concurrence of the Commonwealth. No hearing was held, no findings as to the nature, extent, or irreparability of any potential prejudice were made, and no alternative and less restrictive methods of insuring a fair and impartial trial were considered.

On May 4, 1977, appellants filed a Petition to Vacate the trial court's orders. The trial court signed a Rule, returnable on May 9, 1977, *after* the scheduled completion date of the suppression hearings. Appellants thereupon filed with the Supreme Court of Pennsylvania, on May 4, 1977, Petitions for Writ of Mandamus and Prohibition and for Plenary Jurisdiction.<sup>4</sup> In these Petitions, appellants asserted that the trial court's orders infringed upon free speech and violated the First, Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution by spreading a pervasive cloak of secrecy over an important criminal trial with no prior showing of impending prejudice to the defendant's right to a fair trial.

On May 9, 1977, the trial court heard argument on the Petition to Vacate. Appellants contended specifically

3. Because of the impoundment order, those orders themselves, which directly abridged appellants' rights to observe and report the news, were not made available to appellants until released by the trial court for the purpose of this litigation.

4. The Petition for Plenary Jurisdiction was filed pursuant to § 205 of Pennsylvania's Appellate Court Jurisdiction Act, 17 Pa. S. § 211.205, which provides for the assumption by the Supreme Court of plenary jurisdiction over matters of immediate public importance with authority to enter orders to "cause right and justice to be done."

that the Pennsylvania Rules of Criminal Procedure were unconstitutional (Transcript of Hearing Before The Honorable Domenic D. Jerome in *Commonwealth v. W. A. "Tony" Boyle*, May 9, 1977, p. 15). Appellants also asserted that prior to the entry of orders which closed the courtroom, sealed all records, and imposed a "gag," a hearing should have been held to determine the propriety of the orders under the circumstances and to ascertain whether "more narrow orders could be drawn which might protect the rights of the defendant without unduly infringing upon the rights of the press" (*Id.* at pp. 9-10). The trial judge ruled that he was obligated to accord *prima facie* validity to the Pennsylvania Supreme Court's Rules and denied the Petition to Vacate.

On May 23, 1977, the Pennsylvania Supreme Court denied both Petitions for Mandamus and for Plenary Jurisdiction, thus rejecting appellants' claims as to the constitutional infirmity of the Pennsylvania Rules of Criminal Procedure. On a prior appeal to this Court (No. 77-308), based upon the substantial federal questions presented herein, the Court on January 9, 1978 exercised its appellate jurisdiction and vacated the judgment of the Pennsylvania Supreme Court and remanded the case for clarification of the record. 54 L. Ed. 2d 506

On April 28, 1978, the Pennsylvania Supreme Court reinstated its prior judgment Orders and filed an opinion in connection therewith again rejecting appellants' claims as to the substantive and procedural constitutional infirmity of the Pennsylvania Rules of Criminal Procedures to which this appeal is directed.

## II. Montgomery County Cases.

**The Society of Professional Journalists, Sigma Delta Chi, Greater Philadelphia Chapter, et al.<sup>5</sup> v. The Honorable Robert W. Honeyman; and The Society of Professional Journalists, Sigma Delta Chi, Greater Philadelphia Chapter, et al. v. The Honorable Lawrence A. Brown.**

**Montgomery Publishing Company<sup>6</sup> v. The Honorable Robert W. Honeyman; and Montgomery Publishing Company v. The Honorable Lawrence A. Brown.**

These actions were filed in connection with two separate criminal trials pending in the Court of Common Pleas of Montgomery County, Pennsylvania: *Commonwealth v. John Palmer*, No. 149-77 and *Commonwealth v. Larry J. Phillips*, No. 5060-76. The defendant in the *Palmer* case was a policeman charged with the kidnap-murder of a young girl. The defendant in *Phillips* was accused of murdering a Montgomery County policeman. In both cases, the trial courts entered orders, pursuant to the Pennsylvania Rules of Criminal Procedure, which closed the courtrooms to the press and public during pretrial hearings,

### 5. The parties below were:

Equitable Publishing Company, Inc., publisher of *The North Penn Reporter* of Lansdale, Montgomery County, Pennsylvania and *The Town and Country* of Pennsburg, Montgomery County, Pennsylvania, and owner and operator of radio station WNPV of Lansdale, Montgomery County, Pennsylvania;

The Society of Professional Journalists, Sigma Delta Chi, Greater Philadelphia Chapter; The Pennsylvania Newspaper Publishers Association; and The Pennsylvania Society of Newspaper Editors, professional associations of Pennsylvania journalists.

### 6. Montgomery Publishing Company is the publisher of ten newspapers distributed in Montgomery County, Pennsylvania.

sealed and impounded all records of the hearings, and prohibited parties, attorneys, police officers, prospective witnesses, and others from discussing or commenting upon the cases. Petitions to Vacate the trial courts' orders, raising the identical issues as in *Philadelphia Newspapers, Inc. v. Jerome*, were filed in each action. These Petitions were denied for lack of standing. Thereafter, Petitions for Mandamus and/or Prohibition and Petitions for Assumption of Plenary Jurisdiction were filed with the Supreme Court of Pennsylvania. All Petitions were denied without opinion on June 20, 1977.

On the prior appeal to this Court (No. 77-308), brought together with *Philadelphia Newspapers, Inc. v. Jerome* pursuant to the Court's Rule 15, 3, the Court on January 9, 1978 vacated the judgment of the Pennsylvania Supreme Court in all cases and remanded for clarification of the record. 54 L. Ed. 2d 506.

On April 28, 1978, the Pennsylvania Supreme Court reinstated its prior judgments in all cases and filed a single opinion in connection with them and *Philadelphia Newspapers, Inc. v. Jerome*, again rejecting appellants' claims as to the constitutional infirmity of the Pennsylvania Rules of Criminal Procedure to which this appeal is directed.

## THE FEDERAL QUESTIONS ARE SUBSTANTIAL.

### I. Rules of Criminal Procedure Mandating Closed Pretrial Suppression Hearings and Impounded Court Records Based Solely on the Request of the Defendant and Without Hearing or Any Finding of Intending Prejudice, Violate Appellants' Fundamental Constitutional Rights.

In *Nebraska Press Assoc. v. Stuart*, 427 U. S. 539 (1976), this Court expressly left undecided issues relating to (a) the validity of the closing of pretrial proceedings with the consent of the defendant, and (b) judicially imposed restraints on lawyers and others. *Id.*, 427 U. S. at 564, n. 8. At issue here are cases in which, during a very brief period of time, three separate trial courts in important criminal prosecutions<sup>7</sup> closed pretrial hearings, sealed court records, and imposed broad restraining orders on attorneys and others, in reliance upon procedural rules permitting action merely upon motion of the defendant and affording no hearing to the parties excluded and foreclosed from access to the news. The courts below gave no consideration to less restrictive methods of assuring the particular criminal defendant's right to a fair trial, methods this Court has noted range from a vigorous *voir dire* of potential jurors to impaneling and sequestering a jury prior to the pretrial suppression hearing. *Id.*

Upon remand and without affording opportunity for further briefs or arguments by appellants, the Pennsylvania Supreme Court, adopting state-wide factual findings

7. In one, the once national president of the United Mine Workers of America was the murder defendant. In the second, a police officer was the defendant charged with murder. And in the third, also a murder case, the defendant was charged in connection with the death of a police officer.

of an essentially legislative nature, upheld the Rules of Criminal Procedure it adopted as constituting "an appropriate procedural device for the administration of a state court system of criminal justice." Ex. 2, at pp. 59-60.

It is imperative for this Court to take these appeals and decide whether and, if so, under what circumstances, pretrial proceedings in criminal cases may be closed in response to assertions of possible prejudicial publicity. Courts throughout the country, in their zealous and frequently misguided desire to protect the Sixth Amendment rights of criminal defendants, have been closing courtrooms and sealing court records with dangerously increasing frequency.<sup>8</sup> The limits of a trial court's power to deny public access to information concerning crucial stages of the criminal process should be tested, and a decision on these appeals, after full briefing and argument, is necessary for the preservation of fundamental constitutional rights under the First, Fifth, Sixth, and Fourteenth Amendments.

The Pennsylvania Supreme Court upheld the constitutionality of its own Rules which provide for the closing of suppression hearings and sealing of records at the whim of a defendant, without inquiry into the probability of harm from publication or the interests of the public in open criminal judicial proceedings, either generally or in a particular case. It did so by creating an irrebuttable presumption of prejudice to the fair trial right of any defendant requesting a closed hearing. Such blanket exclusion of the news media from judicial proceedings ignores the unique role of the media in reporting criminal trials and pretrial proceedings, as recognized by this Court in *Cox Broadcasting Co. v. Cohn*, 420 U. S. 469, 491-92 (1975):

8. See 46 U. S. L. W. 2534 (1978).

"[I]n a society in which each individual has but limited time and resources with which to observe at first hand the operations of his government, he relies necessarily upon the press to bring to him in convenient form the facts of those operations. Great responsibility is accordingly placed upon the news media to report fully and accurately the proceedings of government, and official records and documents open to the public are the basic data of governmental operations. Without the information provided by the press most of us and many of our representatives would be unable to vote intelligently or to register opinions on the administration of government generally. With respect to judicial proceedings in particular, the function of the press serves to guarantee the fairness of trials and to bring to bear the beneficial effects of public scrutiny upon the administration of justice."

See also, *Sheppard v. Maxwell*, 384 U. S. 333, 349-50 (1966); *Estes v. Texas*, 381 U. S. 532, 541-42, *reh. den.* 382 U. S. 875 (1965); *Craig v. Harney*, 31 U. S. 367, 374 (1947).

It is meaningless to say that ~~the public is~~ free to publish truthful information about ~~civil and~~ proceedings when press and public can be and are ~~denied access~~ to the courtroom and to the official records of the proceedings therein, so that information about important judicial proceedings cannot be gathered and reported to the public at large.

Few traditions in this country are more deeply rooted in our legal history than that of the administration of justice in public view. *United States v. Cianfrani*, 573 F. 2d 835, 847-848 (3d Cir. 1978). Only recently have we seen the wide assault on that tradition exemplified by the orders in these cases. The foundation for the tradition of

public trials and pretrial proceedings was succinctly described by this Court in *In Re Oliver*, 333 U. S. 257, 268-270 (1948):

"The traditional Anglo-American distrust for secret trials has been variously ascribed to the notorious use of this practice by the Spanish Inquisition, to the excesses of the English Court of Star Chamber, and to the French monarchy's abuse of the *lettre de cachet*. All of these institutions obviously symbolized a menace to liberty. . . . The knowledge that every criminal trial is subject to contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power."<sup>9</sup>

More recently, in *Craig v. Harney*, *supra*, 331 U. S. at 374, this Court declared:

"A trial is a public event. What transpires in the courtroom is public property. . . . Those who see and hear what transpired can report it with impunity. There is no special perquisite of the judiciary which enables it, as distinguished from other institutions of democratic government, to suppress, edit, or censor events which transpire in proceedings before it."

In an action like the *Boyle* murder retrial involving the former head of one of the nation's most powerful labor unions, or in entirely different factual contexts, as in the *Palmer* and *Phillips* cases, involving the murder of a policeman and a young girl, courts must fully investigate the potential for prejudice prior to entering orders

9. Pretrial hearings are an integral part of the "trial." See *Kirby v. Illinois*, 406 U. S. 682, 689-90 (1972); *United States ex rel. Bennett v. Rundle*, 419 F. 2d 599 (3d Cir. 1969) (en banc); *United States v. Cianfrani*, *supra*; *United States v. Clark*, 475 F. 2d 240 (2d Cir. 1973).

restricting the public's access to court proceedings. In all of these actions, each with entirely different facts, the trial courts entered virtually identical orders at the mere request of the defendants. Secret or closed judicial proceedings are the antithesis of the orderly operation of our public institutions. Secrecy breeds suspicion, distrust, and rumor, or what may be worse, encourages public apathy and indifference. Public confidence in the administration of justice is directly served by judicial proceedings open to public scrutiny. Numerous courts throughout the country have held that the public has a cognizable constitutional interest in keeping trials open.<sup>10</sup> The First and Sixth Amendments command that, absent extraordinary circumstances, criminal proceedings be public. As the Court has most recently stated:

"The requirement of a public trial is satisfied by the opportunity of members of the public and the press

10. See, e.g., *United States v. Cianfrani*, *supra*; *United States ex rel. Lloyd v. Vincent*, 520 F. 2d 1272, 1274 (2d Cir.), cert. denied 423 U. S. 937 (1975); *Lewis v. Peyton*, 352 F. 2d 791, 792 (4th Cir. 1965); *United States v. Kobli*, 172 F. 2d 919, 924 (3d Cir. 1949); *United States v. Sorrentino*, 175 F. 2d 721, 722-23 (3d Cir.), cert. denied 338 U. S. 868, reh. denied 338 U. S. 896 (1949); *WXYZ v. Hand*, 3 Med. L. Rptr. 1430 (E. D. Mich. 1977); *United States ex rel. Mayberry v. Yeager*, 321 F. Supp. 199, 204 (D. N. J. 1971); *Keene Pub. Corp. v. Keene District Court*, 380 A. 2d 261 (N. H. Sup. Ct. 1977); *State ex rel. Dayton Newspapers v. Phillips*, 46 Ohio St. 2d 457, 351 N. E. 2d 127 (1976); *State ex rel. Gore Newspaper Company v. Tyson*, 313 So. 2d 777 (Fla. App. 4th Dist. 1975); *Citizen Publishing Company v. Buchanan*, 22 Ariz. App. 521 (1974); *People v. Hinton*, 31 N. Y. 2d 71, 75, 334 N. Y. S. 2d 885, 286 N. E. 2d 265 (1972), cert. denied 410 U. S. 911 (1973); *Oliver v. Postel*, 30 N. Y. 2d 171, 331 N. Y. S. 2d 207 (1972); *Phoenix Newspapers, Inc. v. Jennings*, 107 Ariz. 557, 490 P. 2d 563 (1971); *Oxnard Publishing Co. v. Superior Court*, 68 Cal. Rptr. 83 (Ct. App. 1968); *Phoenix Newspapers, Inc. v. Superior Court*, 101 Ariz. 257, 418 P. 2d 594 (en banc 1966); *E. W. Scripps Co. v. Fulton*, 100 Ohio App. 157, 125 N. E. 2d 896 (1955), appeal dismissed as moot, 164 Ohio 261, 130 N. E. 2d 701 (Sup. Ct. 1955); *Kirtowsty v. Superior Court*, 143 Cal. Rptr. 2d 745, 300 P. 2d 163 (Ct. App. 1956).

to attend the trial and to report what they have observed." *Nixon v. Warner Communications, Inc.*, 55 L. Ed. 2d 570, 587 (1978).<sup>11</sup>

The Fifth Amendment's requirement of due process of law, applicable to the States through the Fourteenth Amendment, compels a full factual hearing at which must be established a constitutionally recognized basis for abrogating such precious First and Sixth Amendment rights of the public and the press.

The issues raised by the instant appeal are of profound national importance. Under what circumstances the criminal process can be closed from public view is an issue of immense concern to courts throughout the country, seeking appropriate methods to insure fair and impartial trials while preserving and protecting the interests of the public at large.<sup>12</sup> The Pennsylvania Rules of Criminal Procedure, which have now been construed by Pennsylvania's highest court to mandate closed proceedings at the mere request of a defendant, cannot meet constitutional muster. In numerous decisions, this Court has recognized that "pretrial publicity—even pervasive, adverse publicity—does not inevitably lead to an unfair trial." *Nebraska Press Assoc. v. Stuart*, *supra*, 427 U. S. at 554. See also, *Stroble v. California*, 343 U. S. 181 (1952); *Beck v. Washington*, 369 U. S. 541 (1962); *Murphy v. Florida*, 421 U. S. 794 (1975). At the very least, therefore, this Court should, after full hearing of these appeals, preclude the closing of criminal proceedings absent a showing

11. The criminal defendant himself has no right to compel a private trial. See *Singer v. United States*, 380 U. S. 24, 35 (1965).

12. See, e.g., *Gannett Co., Inc. v. DePasquale*, No. 77-1301, certiorari granted May 1, 1978; *United States v. Cianfrani*, *supra*; *WXYZ v. Hand*, *supra*; *Brian W. v. Superior Court*, 3 Med. L. Rptr. 1993 (Cal. Sup. Ct. 1978); *Keene Pub. Corp. v. Keene District Court*, *supra*.

that (a) the nature and extent of pretrial publicity creates a clear and immediate threat to the fairness of the trial; and (b) no other available measures will be adequate so that closure is inescapably necessary in order to preserve the defendant's right to a fair trial.

"In practical terms, this means 'that any claim of practical justification for a departure from the constitutional requirement of a public trial must be tested by a standard of strict and inescapable necessity.' *Bennett v. Rundle*, 419 F. 2d 599, 607 (3d Cir. 1969) (in banc). This is necessary to insure that '[i]t is only under the most exceptional circumstances that [even] limited portions of a criminal trial may be even partially closed.' *Stamicarbon N. V. v. American Cyanamid Co.*, 506 F. 2d 532, 542 (2d Cir. 1974)."

*United States v. Cianfrani*, *supra*, at 854. The showing necessary to close proceedings should be made by the clear and convincing evidence<sup>13</sup> necessary to overcome the heavy presumption against constitutional validity<sup>14</sup> of any order restricting publication of information ordinarily in the public domain.

The Court has granted review, by writ of certiorari, of similar questions as those presented in this appeal. *Gannett Co., Inc. v. Hon. Daniel A. DePasquale*, No. 77-1301. This case, however, presents an additional factor not involved in *Gannett Co., Inc.*, namely, a state-wide court rule which, without affording any opportunity for

13. This Court has adopted the "clear and convincing evidence" standard in other contexts involving protection of First Amendment freedoms. See, *Gertz v. Robert Welch, Inc.*, 418 U. S. 323, 342 (1974); *New York Times Co. v. Sullivan*, 376 U. S. 254, 285-86 (1964). Cf. *Landmark Communications, Inc. v. Virginia*, 56 L. Ed. 2d 1, 12-13 (1978).

14. *Times-Picayune Publishing Corp. v. Schulingkamp*, 419 U. S. 1301, 1307 (1974) (In Chambers Opinion of Powell, J.); *New York Times Co. v. United States*, 403 U. S. 713, 714 (1971).

hearing in any particular case, *requires* a closed court and exclusion of the press and public whenever triggered by the request of the criminal defendant. The court below, rather than adjudicating the relevant facts of this case,<sup>15</sup> found the Pennsylvania Rules of Criminal Procedure here at issue to be constitutional based upon findings which are general in nature and can best be described as "legislative" facts. Such findings are clearly inadequate to support the trial court closures. *Landmark Communications, Inc. v. Virginia*, *supra*, 56 L. Ed. 2d at 13-14. Appellants anticipate that this case may appropriately be consolidated in this Court with the *Gannett Co., Inc.* case.

The public's fundamental right to be informed of the criminal process is involved in this case. In view of the sweeping effect of the Pennsylvania Rules of Criminal Procedure here challenged, which place a mantle of secrecy around integral portions of criminal trials, it is of the utmost importance that this Court take and decide this case. Further, in view of the nationwide dilemma faced by trial courts in dealing with prejudicial publicity and efforts of defense counsel to foreclose public proceedings, it is imperative for the Court to hear and decide this appeal, and to establish guidelines for the co-existence of the rights and interests of criminal defendants and those of the public at large.

**II. Rules 323(f) and (g) on Their Face and Rule 326, as Applied, Constitute Unconstitutional Prior Restraints on Free Speech and Press by Precluding all Access to Information About Pending Criminal Trials.**

Although no order was entered by the trial courts directly enjoining publication by the news media, all pos-

15. Since the trial courts held no hearing to take evidence concerning the validity of the court closings, the Pennsylvania Supreme Court had no factual record to review.

sible sources of information concerning the cases were effectively closed to them. Such a pervasive denial of access to news about criminal proceedings constitutes, in effect, a prior restraint upon freedom of expression. Freedom of the press, if it is to mean anything, must include the right to publish contemporaneous accounts of criminal proceedings. That right is lost when, as in the cases now on appeal, the ability to publish is lost due to a total inability to gain information.

Long ago James Madison wrote, "A popular government, without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy; or perhaps both." 9 *Writings of James Madison* 103 (G. Hurst, ed. 1910) (emphasis supplied). See also, Mieklejohn, *Free Speech and Its Relation to Self-Government*, at 39 (1948).

This Court has repeatedly emphasized that the general public's right to receive information, *Kleindienst v. Mandel*, 408 U. S. 753, 762-763 (1972), and the right of the press to gather news are protected by the First Amendment, for: "without some protection for seeking out the news, freedom of the press could be eviscerated." *Branzburg v. Hayes*, 408 U. S. 665, 681, 707 (1972). See also, *Red Lion Broadcasting Co. v. FCC*, 395 U. S. 367, 390 (1969); *Stanley v. Georgia*, 394 U. S. 557, 564 (1969); *Lamont v. Postmaster General*, 381 U. S. 321 (1965). Indeed, "the First Amendment protects not only the dissemination but also the receipt of information and ideas." *Houchins v. KQED, Inc.*, 46 U. S. L. W. 4830, 4834, 4837 (1978) (Stevens, J. dissenting). The restrictions imposed by the trial courts' orders effectively denied appellants access to any information concerning the pending criminal proceedings—the courtroom was closed, all records, motions, and papers filed were sealed and impounded, and all

persons having any connection with the case were prohibited from disclosing any information. This cloak of secrecy was and is so extensive as to conceal from the public even the date on which the trials were scheduled to commence.

The impounding of all records made of a pretrial suppression hearing is mandated by Pennsylvania Rule of Criminal Procedure 323(g).

The Pennsylvania Supreme Court has approved, in addition to closed courtrooms, the impounding of all records in the same criminal proceedings at the mere request of the defendant without benefit of any hearing for the parties directly affected by the rulings.<sup>16</sup> This, too, rebukes the history upon which our legal system is built. As Lord Coke observed long ago:

"These records, for that they contain great and hidden treasure, are faithfully and safely kept (as they well deserve) in the King's Treasury. And yet not so kept but that any subject may for his necessary use and benefit have access thereunto, which was the ancient law of England and so is declared by an act of Parliament in 46 E 3." Access to Judicial Records, 175 A. L. R. 1260, 1261. (1948).

In the United States, the same principle has long been acknowledged. *Ex parte Drawbaugh*, 2 App. D. C. 404, 406-408 (1894); *Sloan Filter Co. v. El Paso Reduction Co.*, 117 Fed. 504, 506-507 (10th Cir. 1902).

By contrast to the Pennsylvania courts, the Court of Appeals for the Fourth Circuit, in reviewing an order impounding papers filed in the criminal proceedings against

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16. In *Boyle*, all records in the action, including but not limited to records of the suppression hearing, were sealed at the request of defendant.

Maryland Governor Mandel, has held the impoundment order to be "an unnecessary prior restraint on freedom of the press," and issued a writ of mandamus vacating the impoundment order. *In Re Washington Post Company, et al.*, United States Court of Appeals for the Fourth Circuit, No. 76-1695, Writ of Mandamus issued July 19, 1976. See also, *WXYZ v. Hand*, *supra*; *Forcade v. Knight*, 416 F. Supp. 1025 (D. D. C. 1976); *Westinghouse Broadcasting Company, Inc. v. Dukakis*, 409 F. Supp. 895 (D. Mass. 1976); *In Re Midwest Milk Monopolization Litigation*, 405 F. Supp. 118 (W. D. Mo. 1975); *Borreca v. Fasi*, 369 F. Supp. 906 (D. Haw. 1974); *Northwest Publications, Inc. v. Anderson*, 3 Med. L. Rptr. 1302 (Minn. Sup. Ct. 1977); *Charlottesville Newspapers, Inc. v. Berry*, 215 Va. 116, 206 S. E. 2d 267 (1974).

Furthermore, the all-inclusive prohibition on dissemination of information concerning the trial or pretrial proceedings constitutes a prior restraint. In *CBS, Inc. v. Young*, 522 F. 2d 234, 240 (6th Cir. 1975), an order prohibiting those involved in a highly publicized criminal case from discussing the case with any member of the press or public was held to be "an extreme example of a prior restraint upon freedom of speech and expression . . ." See also, *Chicago Council of Lawyers v. Bauer*, 522 F. 2d 242 (7th Cir. 1975).

The orders entered by the trial courts denied any access to information concerning the pending criminal trials. The orders and the Pennsylvania Rules pursuant to which they were issued are clearly intended to restrict the flow of information, as distinguished from the restrictions upheld in *Pell v. Procunier*, 417 U. S. 817 (1974); *Houchins v. KQED, Inc.*, *supra*; and *Nixon v. Warner Communications, Inc.*, *supra*. Unquestionably, a trial court has the power to enter appropriate protective orders where neces-

sary to avoid a clear and imminent threat to the administration of justice and to preserve the defendant's right to a fair trial. Where, as here, however, the orders are tantamount to the imposition of a prior restraint, denying any access to and thus precluding publication of any information concerning the criminal trials, their entry must at the very least be supported by the same standards necessary to support any prior restraint. See *Nebraska Press Assoc. v. Stuart, supra*; *Northwest Publications, Inc. v. Anderson, supra*. Moreover, the Pennsylvania Rules of Criminal Procedure here challenged permit the entry of such orders without so much as a hearing, let alone the showing necessary to overcome the heavy presumption of invalidity. Accordingly, it is essential for this Court to declare the facial unconstitutionality of Rules 323(f) and (g) and the unconstitutionality of Rule 326, as applied in this case, which restrained the public's access to its courts without affording the slightest measure of procedural due process to those restrained.

It seems impossible to overstate the importance of the issues raised by the imposition of sweeping restrictive orders without any showing as to their necessity or validity. The decision on remand by the Pennsylvania Supreme Court has mandated a rule of total secrecy of significant judicial proceedings, drastically curtailing the constitutional rights of the press and public in the name of a "fair trial."

Based upon the foregoing arguments and authorities it is requested that the Court note jurisdiction in this appeal, receive full briefs on the merits, and hear oral arguments in order to resolve the substantial federal questions here involved.

Respectfully submitted,

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**EXHIBIT 1.**

IN THE  
SUPREME COURT OF THE UNITED STATES

No. 77-308.

PHILADELPHIA NEWSPAPERS, INC., et al.,  
Appellants,

v.

DOMENIC D. JEROME, Judge of the Court of  
Common Pleas of Delaware County, Pennsylvania

— US —, 54 L Ed 506, 98 S Ct —

Decided January 9, 1978.

**OPINION OF THE COURT**

**PER CURIAM.**

The proceedings below were brought to gain access by the press and public to pretrial suppression hearings in three separate state criminal proceedings. Access was denied and the trial judge closed all pretrial hearings and sealed and impounded all papers, documents, and records filed in the cases. The judge also prohibited the parties, their attorneys, public officials, and certain others, from disseminating information concerning the hearings. Appellants then filed a petition for a writ of mandamus with the Supreme Court of Pennsylvania. However, this was denied without opinion. Appellants, arguing that they have been denied their federal constitutional rights, now urge us to take appellate jurisdiction of these matters under 28 USC § 1257(2) [28 USCS § 1257(2)].

As matters now stand, the record does not disclose whether the Supreme Court of Pennsylvania passed on appellants' federal claims or whether it denied mandamus on an adequate and independent state ground. For this reason, we vacate the judgment of the Supreme Court, and remand the cause to that court for such further proceedings as it may deem appropriate to clarify the record. See *California v Krivda*, 409 US 33, 34 L Ed 2d 45, 93 S Ct 32 (1972).

MR. JUSTICE REHNQUIST, with whom MR. JUSTICE STEVENS joins, dissenting.

The Court today summarily vacates the judgment of the state supreme court and remands for further proceedings. Neither past decisions of this Court nor policy considerations support this unwarranted assumption of jurisdiction and imposition on the state courts.

The Pennsylvania Rules of Criminal Procedure permit a trial judge to close pretrial suppression hearings from the press and public at the request of the criminal defendant, mandate that all records of such hearings be sealed, and allow the judge in a "widely-publicized or sensational case" to prohibit parties and witnesses from making extra-judicial statements. This appeal stems from the entry of such orders in three Pennsylvania murder trials. In the first trial, appellants filed a Petition to Vacate the orders with the trial judge; on the same day, appellants also filed Petitions for Writ of Mandamus and Prohibition and for Plenary Jurisdiction with the Pennsylvania Supreme Court. The Petition to Vacate was denied by the trial judge after the suppression hearing on the ground, according to appellants, "that he was obligated to accord *prima facie* validity to the Pennsylvania Supreme Court's Rules."

The Pennsylvania Supreme Court two weeks later denied the Petitions for Mandamus and for Plenary Jurisdiction without opinion. Appellants filed similar Petitions to Vacate with the common pleas judges presiding over the other two trials; these petitions were denied on the ground that appellants lacked standing to challenge the orders. Appellants thereafter again filed Petitions for Mandamus and Prohibition and for Plenary Jurisdiction with the Pennsylvania Supreme Court which were denied without opinion.

We do not know why the Pennsylvania Supreme Court denied appellants' Petitions for Writ of Mandamus and Prohibition and for Plenary Jurisdiction.<sup>1</sup> There is no reason to presume that the petitions were rejected because the Pennsylvania Supreme Court disagreed with appellants' constitutional claims. The petitions were for extraordinary relief. The Pennsylvania Supreme Court has consistently emphasized that such petitions are "to be used only with great caution and forebearance and as an extraordinary remedy in cases of extreme necessity, to secure order and regularity in judicial proceedings if none of the ordinary remedies provided by law is applicable or adequate to afford relief." Such relief "is not of absolute right but rests largely in the sound discretion of the court. It will never be granted where there is a complete and effective remedy by appeal, certiorari, writ of error, injunction, or otherwise." *Carpentertown Coal & Coke Co. Laird*, 360 Pa. 94, 102, 61 A2d 426, 430 (1948). See

1. 17 Pa Cons Stat § 211.201 gives the Supreme Court of Pennsylvania "original but not exclusive jurisdiction" to issue writs of mandamus or prohibition to courts of inferior jurisdiction. 17 Pa Cons Stat § 211.205, entitled "Extraordinary Jurisdiction," permits the Supreme Court of Pennsylvania to assume plenary jurisdiction "on its own motion or upon petition of any party, in any matter pending before any court or justice of the peace of this Commonwealth involving an issue of immediate public importance."

also Commonwealth ex rel. Specter v Shiomas, 457 Pa 104, 320 A2d 134 (1974); Petition of Specter, 455 Pa 518, 317 A2d 286 (1974); Francis v. Corleto, 418 Pa. 417, 211 A2d 503 (1972).

While appellants claim that their petitions to the Pennsylvania Supreme Court drew into question the constitutional validity of the sections of the Pennsylvania Rules of Criminal Procedure described above, the Pennsylvania Supreme Court's denial of their petitions did not on its face decide in favor of the Rules' validity. Thus, it would not appear that we have jurisdiction to note the appeal under 28 USC § 1257(2) [28 USCS § 1257(2)].<sup>2</sup>

Of course, the denials may have been grounded on a decision by the Pennsylvania Supreme Court that the Rules do not violate the Federal Constitution. But this does not require that we vacate a presumably valid judgment of a state supreme court and remand for further proceedings. A less intrusive alternative, and one supported by past precedents of this Court, is to postpone consideration of jurisdiction until appellants have had an opportunity to demonstrate that the judgment appealed from does not rest on an independent and adequate state ground. See, e.g., Lynam v Illinois, 368 US 908, 7 L Ed 2d 128, 82 S Ct 190 (1961) (consideration of certiorari deferred "to accord counsel for petitioner opportunity to secure a certificate from the Supreme Court of Illinois as to whether the judgment herein was intended to rest on an adequate and independent state ground"); *Herb v Pitcairn*, 324 US 117, 89 L Ed 789, 65 S Ct

2. Section 1257(2) provides for Supreme Court review of final judgments rendered by the highest court of a State "[b]y appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

459 (1945). By vacating the judgment below, this Court is taking the normal burden of demonstrating that we have jurisdiction off of appellant and placing it on the Supreme Court of Pennsylvania. We deny extraordinary relief regularly without typically expressing our reasons for so doing. We should not place a higher requirement on state supreme courts under penalty of this Court's vacating their judgment.

The Supreme Court of Pennsylvania did not affirm the orders of the trial judges. If it had and if there were reasonable doubt as to whether the affirmance were on state or federal grounds, the precedential and res judicata effects of the affirmance might call for vacating the judgment below. Cf. *California v Krivda*, 409 US 33, 34 L Ed 2d 45, 93 S Ct 32 (1972) (judgment affirming a suppression order vacated when it was unclear whether judgment rested on state or federal constitutional grounds). However, the Supreme Court of Pennsylvania has merely denied extraordinary and discretionary relief without indicating any opinion on appellants' constitutional challenge. Appellants are thus presumably free to pursue their challenge through state and federal actions still open to them. Under similar circumstances, where it was unclear whether the lower court denied relief on the merits or because the wrong remedy had been chosen, this court has dismissed the appeal or petition for certiorari. See, e.g., *Phyle v Duffy*, 334 US 431, 92 L Ed 1494, 68 S Ct 1131 (1948); *Woods v Nierstheimer*, 328 US 211, 90 L Ed 1177, 66 S Ct 996 (1946); *White v Ragen*, 324 US 760, 89 L Ed 1348, 65 S Ct 978 (1945). I would do that here unless appellants carry their burden of establishing that the decision of the Supreme Court of Pennsylvania did *not* rest on an adequate state ground.

**EXHIBIT 2.**

IN THE  
SUPREME COURT OF PENNSYLVANIA  
EASTERN DISTRICT

No. 384 Misc. Docket 21

Petition for Writ of Mandamus and Prohibition  
Petition for Plenary Jurisdiction  
Petition for Expedited Hearing

PHILADELPHIA NEWSPAPERS, INC., The Associated Press, Central States Publishing Inc., The Pennsylvania Newspaper Publishers Association, The Pennsylvania Society of Newspaper Editors, and the Society of Professional Journalists, Sigma Delta Chi, Greater Philadelphia Chapter,

*Petitioners*

*v.*

THE HONORABLE DOMENIC D. JEROME, Judge of the Court of Common Pleas of Delaware County, Pennsylvania.

No. 399 Misc. Docket 21

Petition for Writ of Mandamus and Prohibition  
Petition for Assumption of Plenary Jurisdiction

EQUITABLE PUBLISHING COMPANY, INC., The Society of Professional Journalists, Sigma Delta Chi, Greater Philadelphia Chapter, The Pennsylvania Newspaper Publishers Association and The Pennsylvania Society of Newspaper Editors,

*v.*

*Petitioners,*

THE HONORABLE ROBERT W. HONEYMAN, Judge of the Court of Common Pleas of Montgomery County, Pennsylvania.

No. 400 Misc. Docket 21

Petition for Review in Nature of Prohibition  
Application for Assumption of Plenary Jurisdiction

MONTGOMERY PUBLISHING COMPANY,

*v.*

*Petitioner,*

THE HONORABLE ROBERT W. HONEYMAN, Judge of the Court of Common Pleas of Montgomery County, Pennsylvania.

No. 401 Misc. Docket 21

Application for Assumption of Plenary Jurisdiction

MONTGOMERY PUBLISHING COMPANY,

*v.*

*Petitioner,*

THE HONORABLE ROBERT W. HONEYMAN, Judge of the Court of Common Pleas of Montgomery County, Pennsylvania.

No. 406 Misc. Docket 21

Petition for Writ of Mandamus and Prohibition  
Petition for Assumption of Plenary Jurisdiction

EQUITABLE PUBLISHING COMPANY, INC., The Society of Professional Journalists, Sigma Delta Chi, Greater Philadelphia Chapter, The Pennsylvania Newspaper Publishers Association, and The Pennsylvania Society of Newspaper Editors,

*Petitioners,*

*v.*

THE HONORABLE LAWRENCE A. BROWN, Judge of the Court of Common Pleas of Montgomery County, Pennsylvania.

No. 407 Misc. Docket 21

Petition for Review in Nature of Prohibition  
Application for Assumption of Plenary Jurisdiction

MONTGOMERY PUBLISHING COMPANY,  
*Petitioners,*

*v.*

THE HONORABLE LAWRENCE A. BROWN, Judge of the Court of Common Pleas of Montgomery County, Pennsylvania.

**OPINION OF THE COURT**

Filed: April 28, 1978

ROBERTS, J.

Petitioner newspapers<sup>1</sup> filed in this Court petitions for writs of mandamus and prohibition and for extraordinary relief, challenging the constitutionality of orders issued by respondent judges, upon the request of defendants in three criminal proceedings, pursuant to the Pennsylvania Rules of Criminal Procedure.<sup>2</sup> Petitioners contended that these

1. Petitioner newspapers include Philadelphia Newspapers, Inc., The Associated Press, Central States Publishing, Inc., The Pennsylvania Newspaper Publishers Association, The Pennsylvania Society of Newspaper Editors, and the Society of Professional Journalists, Sigma Delta Chi, Greater Philadelphia Chapter (collectively referred to as "Philadelphia Newspapers"); Equitable Publishing Company, Inc., The Society of Professional Journalists, Sigma Delta Chi, Greater Philadelphia Chapter, The Pennsylvania Newspaper Publishers Association, and The Pennsylvania Society of Newspaper Editors and Montgomery Publishing Company (collectively referred to as "Equitable Publishing").

Respondent judges include: The Honorable Domenic D. Jerome, Court of Common Pleas of Delaware County and the presiding judge over pre-trial motions in *Commonwealth v. Boyle*, Nos. 650-A, 650-B, and 650-C, Washington County, March Session, 1974; The Honorable Robert W. Honeyman, Court of Common Pleas of Montgomery County and presiding judge over pre-trial motions in *Commonwealth v. Palmer*, No. 149-77, Montgomery County; and The Honorable Lawrence A. Brown, Court of Common Pleas of Montgomery County and presiding judge over pre-trial motions in *Commonwealth v. Phillips*, No. 5060-76, Montgomery County. Philadelphia Newspapers challenged the orders of Judge Jerome; Equitable Publishing challenged the orders of Judges Honeyman and Brown.

2. We considered the petitions pursuant to the Appellate Court Jurisdiction Act of 1970, Act of July 31, 1970, P. L. 673, art. II, §§ 201(2) and 205, 17 P. S. §§ 211.201(2) and 211.205 (Supp. 1977). Section 201(2) provides:

*"Original jurisdiction*

The Supreme Court shall have original but not exclusive jurisdiction of:

(2) All cases of mandamus or prohibition to courts of inferior jurisdiction. . . ."

orders, limiting public access to pre-trial hearings on motions to suppress evidence, denied their right of access to judicial proceedings. We concluded that petitioners failed to demonstrate that the orders denied them clear rights and therefore denied the petitions.

#### I. PROCEDURAL HISTORY

In *Commonwealth v. Boyle*, Nos. 650-A, 650-B, and 650-C, Washington County, March Session, 1974, the defendant Boyle was accused of ordering the death of United Mineworkers union official Joseph Yablonski, a crime which received massive national publicity. On January 24, 1974, we granted Boyle's request to change venue from Washington County because of extensive publicity concerning the crime.<sup>3</sup> In *Commonwealth v. Palmer*, No. 149-77, Montgomery County, the defendant, a police officer, was accused of kidnapping and killing a Montgomery County citizen. Petitioner Equitable Publishing averred in its petition that the proceedings were "of the highest public interest and concern in Montgomery County."<sup>4</sup> In *Commonwealth v. Phillips* No. 5060-76, Montgomery County, the defendant was accused of mur-

#### 2. (Cont'd.)

Section 205 provides:

##### *"Extraordinary jurisdiction*

Notwithstanding any other provisions of law, The Supreme Court may, on its own motion or upon petition of any party, in any matter pending before any court or justice of the peace of this Commonwealth involving an issue of immediate public importance, assume plenary jurisdiction of such matter at any stage thereof and enter a final order or otherwise cause right and justice to be done."

3. This Court reversed Boyle's earlier conviction because he was denied an opportunity to present exculpatory evidence. *Commonwealth v. Boyle*, 470 Pa. 343, 368 A. 2d 661 (1977).

4. In acting upon these petitions, we accepted these averments as true. See *Allstate Insurance Co. v. Fioravanti*, 451 Pa. 108, 299 A. 2d 585 (1973).

dering a Montgomery County police officer. Equitable Publishing characterized these proceedings as attracting similar public interest.

Each defendant filed a pre-trial motion to suppress evidence in accordance with the Pennsylvania Rules of Criminal Procedure, Pa. R. Crim. P. 323(a), providing for a pre-trial hearing to determine the admissibility of evidence defendants claim has been obtained in violation of their constitutional rights.<sup>5</sup> Each defendant requested the trial court to exercise its authority, pursuant to Pa. R. Crim. P. 323(f), 323(g), 326, and 327,<sup>6</sup> to enter special orders closing the pre-trial hearing to the public, sealing the record of these pre-trial proceedings, and prohibiting participants in these proceedings from discussing, disclosing, or disseminating evidence "the admissibility of which may have to be determined by the Court." Respondent Judge Jerome entered the requested order in *Boyle*.<sup>7</sup> Re-

5. Pa. R. Crim. P. 323(a) provides:

##### *"Suppression of Evidence*

(a) The defendant or his attorney may make application to the court to suppress any evidence alleged to have been obtained in violation of the defendant's constitutional rights."

6. See infra text at Part III, slip opinion at 10-11.

7. Upon filing applications to suppress evidence pursuant to Rule 323(a), defendant Boyle moved to close the suppression hearings under Rule 323(f) & (g) and under 326 and 327 to limit public comment by parties, witnesses and attorneys on the evidence sought to be suppressed.

Philadelphia Newspapers averred that on March 28, 1977 the court prohibited "parties, attorneys, investigators, judicial officers, state and federal public officials, and prospective witnesses from discussing or commenting upon any proposed evidence or disseminating any documents, the admissibility of which may have to be determined by the Court;" on May 2, 1977, directed the press and public out of the courtroom while pre-trial motions were heard; and ordered sealed all papers related to the pre-trial proceedings.

Where a defendant moves to close a suppression hearing and to restrain participants from public comment thereon, an order

spondents Judges Honeyman and Brown entered the requested orders in *Palmer* and *Phillips*, respectively.<sup>8</sup>

On May 3, 1977, one day after pre-trial suppression proceedings in *Commonwealth v. Boyle* began, Philadelphia Newspapers filed a petition to vacate the orders of respondent Judge Jerome, and a request to stay the pre-trial proceedings. Judge Jerome declined to rule on the petition to vacate the orders until completion of the pre-trial proceedings and refused the stay. One day later, Philadelphia Newspapers filed in this Court its petitions for writs of mandamus and prohibition and for extraordinary relief, requesting this Court to direct Judge Jerome to hold the suppression hearing open to the public and provide other appropriate relief, including a stay of all proceedings. On May 9, 1977, Judge Jerome again declined to rule on the petition, believing he lacked juris-

7. (Cont'd.)

such as this one prohibiting participants from "discussing or commenting upon any proposed evidence or disseminating any documents, the admissibility of which may have to be determined by the Court" is the proper order to enter under Rules 326 and 327.

8. Equitable Publishing averred that on May 2, 1977, the court prohibited "parties, attorneys, police officers, court personnel, prison personnel, and personnel of the sheriff's office from discussing or commenting about [*Commonwealth v. Palmer*]"; directed the press and public out of the courtroom during pre-trial proceedings; and sealed the record of these proceedings.

Equitable Publishing also averred that on May 9, 1977, the court prohibited "parties, attorneys, police officers, court personnel, prison personnel, personnel of the sheriff's office, and prospective witnesses from making or authorizing statements out of court relating to *Commonwealth v. Phillips*". Equitable Publishing also averred that Judge Brown ordered the press and public out of the courtroom, and directed that the record and proceedings be sealed.

On the record presented here, we believe that the orders in *Palmer* and *Phillips* had essentially the same scope as the order in *Boyle*, *supra* note 7.

Respondents invoked Rules 326 and 327 only to ensure that parties to suppression hearings closed under 323 would not release pre-trial prejudicial information. We therefore were not faced with a case in which Rules 326 and 327 were used for any other purpose.

dition over the controversy once petitioner sought special relief in this Court. On May 23, 1977, we denied the requested relief.

Equitable Publishing, on May 12, 1977, filed with the trial court a motion to vacate the orders of Judge Honeyman in *Commonwealth v. Palmer*. Judge Honeyman did not act upon the motion until May 24. Judge Honeyman denied the motion on the basis that the newspapers were without standing to intervene in the criminal proceedings. On May 26, Equitable Publishing filed its petitions for special relief in this Court, requesting the same relief as Philadelphia Newspapers did from the orders in *Commonwealth v. Boyle*.<sup>9</sup> Equitable Publishing averred here that the suppression hearing record had been unavailable only until May 20, 1977, when Palmer's trial ended.<sup>10</sup> We denied relief on June 20, 1977.

On May 12, 1977, Equitable Publishing filed a motion to vacate the orders of Judge Brown in *Commonwealth v. Phillips*. Judge Brown did not rule upon the motion until June 2, 1977, when he dismissed the motions for the same reason as Judge Honeyman. Equitable Publishing filed its petitions for special relief in this Court on June 7, requesting the same relief it sought from the orders in *Commonwealth v. Palmer*. On June 20, 1977, we denied relief.

Petitioners appealed from the orders of this Court to the Supreme Court of the United States. On January 9, 1978, the Court, per curiam, concluded that the record did not indicate whether we "passed on [petitioners'] federal claims" or whether we denied special relief "on an ade-

9. Equitable Publishing and Montgomery Publishing did not expressly request this Court to stay the pre-trial proceedings in *Commonwealth v. Palmer*.

10. See *United States v. Cianfrani*, — F. 2d — (3d Cir., filed March 16, 1978) (tapes defendant sought to suppress must be made public after defendant has pleaded guilty); Pa. R. Crim. P. 323(g).

quate and independent state ground." The Court therefore vacated our orders denying special relief and "remand[ed] the cause to [this C]ourt for such further proceedings as [we] may deem appropriate to clarify the record. See *California v. Krivda*, 409 U. S. 33 (1972)." Mr. Justice Rehnquist, joined by Mr. Justice Stephens, filed a dissenting opinion. On February 9, 1978, this Court received the official mandate of the Supreme Court. Accordingly, we file this opinion.

## II. STATE REMEDIES REQUESTED BY PETITIONER NEWSPAPERS

Petitioners sought writs of prohibition and mandamus from this Court.<sup>11</sup> Prohibition and mandamus both re-

11. Prohibition is an extraordinary writ designed to assure regularity in judicial proceedings by preventing unlawful exercise or abuse of jurisdiction. *In re Reyes*, — Pa. —, 381 A. 2d 865 (1977); *Pirillo v. Takiff*, 462 Pa. 511, 341 A. 2d 896 (1975); *Carpentertown Coal and Coke Co. v. Laird*, 360 Pa. 94, 61 A. 2d 426 (1948); *McNair's Petition*, 324 Pa. 48, 187 A. 498 (1936). "Its function is to restrain or prohibit an offending court from continuing its unwarranted conduct when continuation threatens imminent harm to the individual on whose behalf the writ is issued." Comment, "The Writ of Prohibition in Pennsylvania," 80 Dick. L. Rev. 472, 472-73 (1976) (footnotes omitted).

While prohibition prevents action, mandamus compels it. *Carpentertown Coal and Coke Co. v. Laird*, *supra*. Like prohibition, mandamus is an extraordinary writ of the common law, designed to compel performance of a ministerial act or mandatory duty where there exists a clear legal right in the plaintiff, a corresponding duty in the defendant, and want of any other adequate and appropriate remedy. *Princeton Sportswear Corp. v. Redevelopment Authority*, 460 Pa. 274, 333 A. 2d 473 (1975); *Valley Forge Racing Ass'n. v. State Harness Racing Comm'n.*, 449 Pa. 292, 297 A. 2d 823 (1972). A court issuing a writ of mandamus may direct the exercise of discretion, but not performance of a particular discretionary act. *Taylor v. Abernathy*, 422 Pa. 629, 222 A. 2d 863 (1966); *Mellinger v. Kuhn*, 388 Pa. 83, 130 A. 2d 154 (1957).

Petitioners also requested this Court to invoke its extraordinary jurisdiction because of the asserted immediate public importance of the issues. See *supra* note 2; *Wilson v. Blake*, — Pa. —, 381 A. 2d 450 (1977) (plenary jurisdiction exercised to determine right of criminal defendant under Pa. R. Crim. P. 141(c)(4)

quire a party seeking relief to establish a violation of clear rights not remediable by ordinary processes. This requirement ensures that only the most meritorious claims will require this Court to depart from its normal appellate function and consider an original proceeding. Petitioners failed to establish their entitlement to these extraordinary remedies because they did not present a showing that the orders of respondents, entered pursuant to the Pennsylvania Rules of Criminal Procedures, denied clear rights of petitioners. We therefore denied the petitions.

We first discuss the nature of Pa. R. Crim. P. 323(f) & (g), 326, and 327, pursuant to which the challenged orders were issued. We then discuss petitioners' asserted right of access to pre-trial judicial proceedings and the circumstances in which this right may be temporarily limited in order to protect constitutional rights of individuals and important interests of the public. We next discuss the nature of the right of defendants to trial by an impartial jury and the interest of the Commonwealth and its citizens in the prompt and fair disposition of criminal litigation, both of which are protected by Rules 323, 326, and 327. Finally, we set forth why on these records the Rules of Criminal Procedure may permissibly be applied in these cases to enforce constitutional rights of the accused and promote public interests.

### 11. (Cont'd.)

to make tape recording of preliminary hearing); *Citizens Committee v. Board of Elections*, 470 Pa. 1, 367 A. 2d 232 (1977) (plenary jurisdiction invoked to decide constitutionality of procedures by which Mayor of Philadelphia was to be recalled from office). The presence of an issue of immediate public importance is not alone sufficient to justify extraordinary relief. As in requests for writs of prohibition and mandamus, we will not invoke extraordinary jurisdiction unless the record clearly demonstrates a petitioner's rights. Even a clear showing that a petitioner is aggrieved does not assure that this Court will exercise its discretion to grant the requested relief. See *Illinois v. City of Milwaukee*, 406 U. S. 91, 92 S. Ct. 1385 (1972).

### III. THE PENNSYLVANIA RULES OF CRIMINAL PROCEDURE AND THEIR OBJECTIVES

The Pennsylvania Rules of Criminal Procedure "are intended to provide for the just determination of every criminal proceeding," Pa. R. Crim. P. 2, and "secure simplicity in procedure, fairness in administration and the elimination of unjustified expense and delay . . ." Id. This comprehensive set of statewide Rules assists in the fair, prompt, orderly, and uniform resolution of recurring problems in the administration of our state system of criminal justice.<sup>12</sup>

The Rules upon which the challenged orders were based serve an important function in this scheme by avoiding premature disclosure of information which would jeopardize the right of an accused to an impartial jury. Pa. R. Crim. P. 323(f)&(g) provides:

*"Suppression of Evidence*

• • •

(f) The hearing, either before or at trial, shall be held in open court unless defendant, by his counsel, moves that it be held in the presence of only the defendant, counsel for the parties, court officers and necessary witnesses. In any event, the hearing shall be held outside the hearing and presence of the jury. In all cases the court may make such order concerning

12. Our Rules of Criminal Procedure are a system designed to give effective protection to the rights of defendants and maintain the integrity and stability of our state system of criminal justice. For example, Pa. R. Crim. P. 1100 protects the guarantee of a speedy trial by requiring, subject to carefully drawn exceptions, that an accused be brought to trial within 180 days of the initiation of criminal proceedings against him. Compare *Barker v. Wingo*, 407 U. S. 514, 92 S. Ct. 2183 (1972) (providing for ad hoc approach to speedy trial claims). See also, e.g., Pa. R. Crim. P. 319 (ensuring knowing and voluntary pleas of guilty); Pa. R. Crim. P. 1101 (knowing and voluntary waiver of right to trial by jury).

publicity of the proceedings as it deems appropriate under [Pa. R. Crim. P.] 326 and 327.

(g) A record shall be made of all evidence adduced at the hearing. The clerk of court shall impound the record and the nature and purpose of the hearing and the order disposing of the application shall not be disclosed by anyone to anyone except to the defendant and counsel for the parties. The record shall remain thus impounded unless the interests of justice require its disclosure."

Pa. R. Crim. P. 326 provides:

*"Special Orders Governing Widely-Publicized  
Or Sensational Cases*

In a widely-publicized or sensational case, the Court, on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the Court may deem appropriate for inclusion in such an order. In such cases it may be appropriate for the court to consult with representatives of the news media concerning the issuance of such a special order."

Pa. R. Crim. P. 327 provides:

*"Public Discussion of Pending or Imminent  
Criminal Litigation by Court Personnel*

All court personnel including, among others, court clerks, bailiffs, tipstaffs and court stenographers

are prohibited from disclosing to any person, without authorization by the court, information relating to a pending criminal case that is not part of the public records of the court. This rule specifically prohibits the divulgence of information concerning arguments and hearings held in chambers or otherwise outside the presence of the public."

At a suppression hearing, the accused challenges the admissibility of inculpatory statements, alleged instruments of crime and alleged fruits of crime on grounds that the Commonwealth has obtained such evidence through violation of constitutional or other rights of the accused. Commonwealth witnesses, including police officers, may testify about the crime, and the involvement and behavior of the accused, or his prior criminal record. The accused may choose to testify or present witnesses to challenge the Commonwealth's evidence. Thus, Rules 323, 326 and 327 provide the trial court with a method for avoiding pre-trial exposure of potential jurors to evidence challenged at suppression hearings, thus eliminating a substantial impediment to selection of an unbiased jury.

These Rules also ensure that a defendant's right to have unconstitutionally seized evidence suppressed will not be chilled by fear that information becoming public at a suppression hearing will make an impartial jury difficult or impossible to select. Cf. *United States v. Jackson*, 390 U.S. 570, 88 S. Ct. 1209 (1968) (government may not use fear of death penalty to dissuade defendants from asserting right to jury trial); *Garrity v. New Jersey*, 385 U. S. 493, 87 S. Ct. 616 (1967) (prosecution cannot use statements obtained from policemen threatened with discharge if they refused to testify); see generally *Sheppard v. Maxwell*, 384 U. S. 333, 86 S. Ct. 1507 (1966).<sup>13</sup>

13. The Supreme Court in *Sheppard v. Maxwell*, 384 U. S. 333, 86 S. Ct. 1507 (1966), found that the "carnival atmosphere"

These Rules are designed to promote the clear public interest in having persons accused of crime tried fairly, expeditiously, economically, and only once. If prejudicial publicity occurs, the trial court may have to continue the case, change venue, resort to extensive voir dire to assure that the attitudes of jurors have not been influenced by disclosure, or use the costly and inconvenient device of jury sequestration. See *Simmons v. United States*, 390 U. S. 377, 88 S. Ct. 966 (1968); *Jackson v. Denno*, 378 U. S. 368, 84 S. Ct. 1774 (1964). If the trial court takes inadequate remedial measures, an appellate court would be compelled to reverse a conviction, starting the trial process anew.

Essential to the stability and efficiency of our state court system is the requirement that our trial courts control court calendars. See ABA Project on Standards for Criminal Justice, Standards Relating to the Function of the Trial Judge § 3.8 (Approved Draft, 1972); Standards Relating to Speedy Trial Part I (Approved Draft, 1968). Without Rules 323, 326, and 327, the time and place for trial in this kind of case would in reality be fixed not by courts, but by the timing and degree of premature disclosures of information from suppression hearings. Thus, the Rules, temporarily precluding disclosure of such information wherever necessary, maintain in the courts control over court calendars, assuring uniformity and evenhanded enforcement of criminal justice.

13. (Cont'd.)

resulting from press coverage of the crime and the trial denied the accused a fair trial. Concluding that such an atmosphere "could easily have been avoided since the courtroom and the court house premises are subject to the control of the court," id. at 358, 86 S. Ct. at 1507, the Court imposed a duty upon courts to ensure that an accused is tried by a jury not subjected to prejudicial information. Our Rules of Criminal Procedure are in harmony with the principles announced in *Sheppard*.

#### IV. FREE PRESS AND THE LIMITED RIGHT OF ACCESS TO PRE-TRIAL SUPPRESSION HEARINGS

Petitioners argued that the Constitutions of the United States and Pennsylvania afford the public a right to have open judicial proceedings, including pre-trial motions to suppress. They contended that respondents' orders denied them this right.

Petitioners incorrectly characterize respondents' orders limiting public access to pre-trial suppression hearings deciding the admissibility of evidence in criminal proceedings as "prior restraints." A prior restraint prevents publication of information or material in the possession of the press and is presumed unconstitutional. See *Oklahoma Publishing Co. v. District Court*, 430 U. S. 308, 97 S. Ct. 1045 (1977) (when press obtained name and photo of juvenile court could not prohibit publication); *Nebraska Press Ass'n v. Stuart*, 427 U. S. 539, 96 S. Ct. 2791 (1976) (striking down order prohibiting publication of inculpatory statements and facts obtained by press).<sup>14</sup> These orders, however, issued in compliance with the Rules of Criminal Procedure, did not prevent petitioners from publishing any information in their possession or from writing whatever they pleased and therefore did not constitute a prior restraint upon publication.<sup>15</sup>

The distinction between restraints upon the content of publication and limitations upon access is well estab-

14. Accord, *New York Times Co. v. United States*, 403 U. S. 713, 91 S. Ct. 2140 (1971) (government could not enjoin publication of secret documents allegedly imperilling national security obtained by press clandestinely); *Near v. Minnesota*, 283 U. S. 697, 51 S. Ct. 625 (1931) (state may not enjoin publication of "scurrilous" anti-semitic material held by press).

15. Respondents had no authority to impose sanctions on petitioner after publication of any confidential material they might obtain, nor did they attempt to do so. Cf. *Cox Broadcasting Co. v. Cohn*, 420 U. S. 469, 95 S. Ct. 1029 (1975) (invalidating civil penalties for publication of public judicial records).

lished. For example, in *Pell v. Procunier*, 417 U. S. 817, 94 S. Ct. 2800 (1974), the Court upheld prison regulations restricting press interviews with prisoners, but noted that the regulations did not prohibit publication of any material the press obtained. By contrast, in *New York Times Co. v. United States*, 403 U. S. 713, 91 S. Ct. 2140 (1971), the Court prohibited the government from enjoining publication of military documents in the hands of the press, but did not suggest that the government lacked the right to restrict access to them by classification.<sup>16</sup>

The Supreme Court of the United States has held that restrictions may be placed upon access of the public and the press to certain information when the restrictions protect constitutional interests. *McMullan v. Wohlgemuth*, 415 U. S. 970, 94 S. Ct. 1547 (1974), dismissing for want of a substantial federal question, 453 Pa. 147, 308 A. 2d 888 (1973) (press access properly restricted by state regulations protecting privacy of welfare recipients); see *Sunbeam Television Corp. v. Shevin*, No. 77-1056, 46 U. S. L. W. 3585 (March 21, 1978), dismissing for want of a substantial federal question, 351 S. 2d 723 (Fla. 1977) (upholding state law forbidding reporters from invading privacy by secretly taping interviews).<sup>17</sup> This rule applies

16. The basis of the distinction may be that direct restraints upon expression impose restrictions on human thought and strike at the core of liberty in a way which limitations on access to information do not. See generally Emerson, *The System of Freedom of Expression* (1970).

17. See generally, *Comment, Rights of the Public and the Press to Gather Information*, 87 Harv. L. Rev. 1505 (1974); *Note, The First Amendment and the Public Right to Information*, 35 U. Pitt. L. Rev. 93 (1973); *Comment, Right of the Press to Gather Information*, 71 Colum. L. Rev. 838 (1971).

The Supreme Court has also held that certain valid governmental interests may be promoted by limiting public access to sources of information. *Pell v. Procunier*, 417 U. S. 817, 94 S. Ct. 2800 (1974) (prison regulations may prohibit interviews with particular prisoners); *Zemel v. Rus*, 381 U. S. 1, 85 S. Ct. 1272

the principle that government may, when necessary, protect personal liberties even where enforcement of those liberties may subordinate in limited instances the constitutional interests of others. For example, in *Runyon v. McCrary*, 427 U. S. 160, 96 S. Ct. 2586 (1976), the Supreme Court held that the 13th and 14th amendments empowered Congress to require private schools to desegregate even though desegregation deprived some citizens of the ability to associate for education in the manner they chose. Similarly, in *Walz v. Tax Commission*, 397 U. S. 664, 90 S. Ct. 1409 (1970), the Court upheld tax exemptions for religious institutions as promoting freedom of religion despite the claim that the exemptions violated the establishment clause. Likewise, the state may recognize property interests in intellectual or artistic creations by prohibiting their publication or broadcast without permission. See Copyright Act, 17 U. S. C. §§ 101 et seq.; *Zacchini v. Scripps-Howard Broadcasting Co.*, — U. S. —, 97 S. Ct. 2849, 2857 (1977) (citing cases).

The public undoubtedly has a strong interest in the judicial process. "A trial is a public event. What transpires in the court room is public property." *Craig v. Harney*, 331 U. S. 367, 374, 67 S. Ct. 1249, 1254 (1947); see *In re Oliver*, 333 U. S. 257, 68 S. Ct. 499 (1948) (need for public trial to protect defendant). The Supreme Court of the United States has suggested that the public's interest in judicial proceedings is constitutionally protected by the

17. (Cont'd.)

(1965) (State Department may restrict reporter foreign travel); *Holden v. Minnesota*, 137 U. S. 483, 491, 11 S. Ct. 143, 146 (1890) (per Harlan, J.) (statute upheld excluding reporters from scene of execution despite request by condemned man); accord, *McLaughlin v. Philadelphia Newspapers, Inc.*, 465 Pa. 104, 348 A. 2d 376 (1975) (records attorney disciplinary hearing may be closed); *Philadelphia Newspapers, Inc. Disciplinary Board*, 468 Pa. 382, 363 A. 2d 779 (1976); see generally, L. Tribe, American Constitutional Law §§ 12-11, 12-19 (1978).

sixth amendment right of the accused to a public trial. *Singer v. United States*, 380 U. S. 24, 85 S. Ct. 783 (1965) (dictum); see *United States v. Cianfrani*, — F. 2d — (3d Cir., filed March 16, 1978); Pa. Const. art. I, § 11.<sup>18</sup> The press serves the important function of informing the public of these public proceedings. *Sheppard v. Maxwell*, supra; see generally ABA Minimum Standards for Criminal Justice, Standards Relating to Fair Trial and Free Press (Approved Draft, 1968).<sup>19</sup>

But the Supreme Court has never held that the first or sixth amendments create an absolute right of access to every court proceedings or to all information in the possession of the government or the courts. See *Nebraska Press Ass'n v. Stuart*, supra; *Pell v. Procunier*, supra; *Branzburg v. Hayes*, 408 U. S. 665, 92 S. Ct. 2646 (1972). Both the *Nebraska Press* majority and the concurring opinion of Mr. Justice Brennan recognize that restrictions on access to pre-trial proceedings are different from restraints on the right to publish information available to the public. Supra at — n. 8, — & — n. 27, 96 S. Ct. at 2805 n. 8, 2822-23 & 2823 n. 27; see *Sheppard v. Maxwell*, 384 U. S. 333, 360-61, 86 S. Ct. 1507, 1521 (1966) (suggesting restraints on access to prevent prejudicial disclosure). In *Oklahoma Publish-*

18. A few federal courts of appeals have allowed certain parts of trials to be kept secret. L. Tribe, American Constitutional Law § 12-11 at 629 n. 28 (citing cases). Similarly, courts-martial operate under rules different from those governing civilian trials. See generally *Middendorf v. Henry*, 425 U. S. 25, 96 S. Ct. 1281 (1976).

19. A few courts have held that the Constitution grants the press access to judicial proceedings. See *CBS, Inc. v. Young*, 522 F. 2d 234, 239 (6th Cir. 1975) (civil trial); *State ex rel. Dayton Newspapers, Inc. v. Phillips*, 351 N. E. 2d 127 (Ohio 1976) (suppression hearings); see also *United States v. Cianfrani*, — F. 2d — (3d Cir., filed March 16, 1978) (panel) (modifying part of district court order closing pre-trial proceedings where defendant challenged admissibility of intercepted statements; court pointed out that, because defendant pleaded guilty following hearing, case did not present fair trial issue).

ing, the Court emphasized that *Nebraska Press* was aimed only at eliminating prior restraints directly prohibiting publication of information and not at any other measures protecting fair trials.

We believe that any limitation on access should be carefully drawn. First, the right of access to court proceedings should not be limited to any reason less than the compelling state obligation to protect constitutional rights of criminal defendants and the public interest in the fair orderly, prompt, and final disposition of criminal proceedings.<sup>20</sup> Second, access should not be limited unless the threat posed to the protected interest is serious.<sup>21</sup> Third, rules or orders limiting access should effectively prevent the harms at which they are aimed.<sup>22</sup> Finally, the rules or

20. Compare *Central South Carolina Chapter v. Martin*, 556 F. 2d 706 (4th Cir. 1977), cert. denied, — U. S. —, — S. Ct. — (1978) (participants may be ordered not to discuss proceedings in order to protect defendant's right to fair trial), and *Gannett Co. v. DePasquale*, 22 Crim. L. Rptr. 2322 (N. Y. filed December 19, 1977) (suppression hearing may be closed to protect right of defendant to an impartial jury), with *Chase v. Robson*, 435 F. 2d 1059 (7th Cir. 1970) (court may not, over opposition of defendant, restrain defense and prosecuting attorneys from public comment on case). Cf. *Runyon v. McCrary*, supra (Congress may enforce thirteenth and fourteenth amendment rights of citizens in ways which limit associational rights of others). See generally *CBS, Inc. v. Young*, 522 F. 2d 234 (6th Cir. 1975) (all pre-trial proceedings may not be closed in civil case where no threat to constitutional rights of litigants shown).

21. Cf., e.g., *Erznoznik v. City of Jacksonville*, 422 U. S. 205, 95 S. Ct. 2268 (1975) (passers-by offended by movies shown at drive-in theatre free to look the other way); *Cohen v. California*, 403 U. S. 15, 91 S. Ct. 1780 (1971) (minor threat to sensibilities of onlookers cannot justify punishment for wearing assertedly offensive message on jacket in public place).

22. Cf. *Moore v. City of East Cleveland*, — U. S. —, — n. 7, 97 S. Ct. 1932, 1936 n. 7 (1977) (statute infringing right of family to live together overturned where ineffective at accomplishing its primary purpose of reducing overcrowding of town); *USDA v. Moreno*, 413 U. S. 528, 536-38, 93 S. Ct. 2821, 2826-27 (1973) (statute infringing right of association overturned where ineffective at accomplishing its stated purpose of ferreting out food stamp fraud).

orders should limit no more than is necessary to accomplish the end sought.<sup>23</sup> Because the challenged Rules and orders are closely tailored to protecting both the constitutional right of defendants to a fair trial and the public's interest in the fair and efficient administration of criminal justice, we denied relief.

## V.

### A. The Challenged Rules and Orders Advance The Public Interest In A Fair and Prompt Criminal Trial.

The Rules and orders petitioners challenge are designed to protect the right of an accused to trial by an impartial jury. No right is more fundamental to the American system of justice. U. S. Const. amend. VI; Pa. Const. art. I, § 9; *Gardner v. Florida*, — U. S. —, 97 S. Ct. 1197 (1977); *Nebraska Press Ass'n v. Stuart*, supra; *Ham v. South Carolina*, 409 U. S. 524, 93 S. Ct. 848 (1973); *Peters v. Kiff*, 407 U. S. 493, 92 S. Ct. 2163 (1972); *Duncan v. Louisiana*, 391 U. S. 145, 88 S. Ct. 824 (1967); *Turner v. Louisiana*, 379 U. S. 466, 85 S. Ct. 546 (1965).

Without a proper method for dealing with extensive publicity concerning a crime, a judicial system runs the serious risk that the jury will reach its verdict based on evidence from sources outside of the courtroom, contrary to the demands of due process. See *Turner v. Louisiana*,

23. See *Nebraska Press Ass'n v. Stuart*, supra at —, —, —, 96 S. Ct. at 2805, 2808, 2822-23 (Opinion of the Court per Burger, C. J.; Powell, J., concurring; Brennan, J., joined by Stewart and Marshall, JJ., concurring). Compare, e.g., *Lovell v. City of Griffin*, 303 U. S. 444, 58 S. Ct. 666 (1938) (ban on circulating handbills voided as too burdensome even though the ordinance challenged did not purport to regulate the content of ideas propagated), and *Saia v. New York*, 334 U. S. 558, 68 S. Ct. 1148 (striking down ban on loudspeakers providing police unfettered discretion to make exceptions), with *Cantwell v. Connecticut*, 310 U. S. 296, 60 S. Ct. 900 (1940) (parade permit requirement tied to need for public order), and *Kovacs v. Cooper*, 336 U. S. 77, 69 S. Ct. 448 (1949) (upholding ordinance forbidding only raucous loudspeakers).

supra; *Irvin v. Dowd*, 366 U. S. 717, 81 S. Ct. 1639 (1961); *Commonwealth v. Bruno*, 466 Pa. 245, 352 A. 2d 40 (1976); *Commonwealth v. Pierce* 451 Pa. 190, 303 A. 2d 209, cert. denied, 414 U. S. 878, 94 S. Ct. 164 (1973).<sup>24</sup> As Justice Clark, speaking for the Court in *Sheppard v. Maxwell*, supra at 350-51, 86 S. Ct. at 1516, observed:

"[L]egal trials are not like elections to be won through the use of the meetinghall, the radio, and the newspaper." *Bridges v. California*, 314 U. S. 252, 271, 62 S. Ct. 190, 197 (1941). And the Court has insisted that no one be punished for a crime without 'a charge fairly made and fairly tried in a public tribunal free of prejudice, passion, excitement, and tyrannical power.' *Chambers v. Florida*, 309 U. S. 227, 236-37, 60 S. Ct. 472, 477 (1940). 'Freedom of discussion should be given the widest range compatible with the essential requirement of the fair and orderly administration of justice.' *Pennekamp v. Florida*, 328 U. S. 331, 56 S. Ct. 1029 (1946). But it must not be allowed to divert the trial from the 'very purpose of a court system . . . to adjudicate controversies, both criminal and civil, in the calmness and solemnity of the courtroom according to legal procedures.' Among these 'legal procedures' is the requirement that the jury's verdict be based on evidence received in open court, not from outside sources."

The most damaging of all information from outside the courtroom comes from the pre-trial suppression hearing. A trial court's ability to afford the accused a fair trial is substantially threatened where challenged inculpatory

24. See *Commonwealth v. Gilman*, 470 Pa. 179, 368 A. 2d 253 (1977) (prosecutor's closing remarks must be facts in evidence and legitimate inferences therefrom); *Commonwealth v. Revty*, 448 Pa. 512, 295 A. 2d 300 (1972) (same).

statements,<sup>25</sup> testimony of the accused bearing on such statements,<sup>26</sup> or other information considered at the suppression hearing becomes public knowledge prematurely. See *Rideau v. Louisiana*, 373 U. S. 723, 83 S. Ct. 1417 (1963) (trial court erred in denying change of venue where accused's statement to police had been televised repeatedly in the area from which the jurors were drawn); *Commonwealth v. Bruno*, *supra* (conviction reversed where trial court failed to question jurors concerning their exposure to publicized, suppressed confession); *Commonwealth v. Pierce*, *supra* (conviction reversed and venue changed where news accounts reported defendant's criminal record and confession to crime); see also *Marshall v. United States*, 360 U. S. 310, 79 S. Ct. 1171 (1959) (conviction reversed where jurors read newspaper accounts detailing defendant's criminal record); *United States v. Williams*, 22 Crim. L. Rptr. 2521 (5th Cir. filed February 27, 1978) (conviction reversed where jurors observed television broadcast concerning defendant's previous conviction). Our Rules are designed to give defendants such as Boyle, Palmer, and Phillips, all charged with murder for crimes generating substantial public attention, the opportunity to be tried, like any other persons accused of crime, on the basis of facts presented at trial.

Further, without proper means for temporarily limiting access to suppression hearings, defendants may be pressured into foregoing their right to challenge the manner in which police obtained inculpatory evidence. A defendant may feel compelled to give up this right out of fear that inculpatory evidence might become public knowl-

25. See *Jackson v. Denno*, 378 U. S. 368, 84 S. Ct. 1774 (1964); *Commonwealth v. Pierce*, *supra*; *Commonwealth ex rel. Gaito v. Maroney*, 422 Pa. 171, 220 A. 2d 628 (1966).

26. See *Simmons v. United States*, 390 U. S. 377, 88 S. Ct. 966 (1968).

edge before or during trial. Such pressure to forego a constitutional right denies due process. *E.g., United States v. Jackson*, 390 U. S. 570, 88 S. Ct. 1209 (1968) (suspect denied due process by being required to waive jury trial to avoid death penalty). Even a defendant who chooses to risk such disclosure might be reluctant to testify or present favorable witnesses out of a similar fear of disclosure. The Rules serve to avoid circumstances compelling an accused to forego these important rights.<sup>27</sup>

Prejudicial publicity from pre-trial suppression hearings injures the Commonwealth as well as the accused. Prejudicial disclosures may taint a trial or require a trial court to delay trial until publicity subsides. Neither delayed trials nor retrials present as favorable opportunities for establishing truth as timely first trials. By precluding prejudicial disclosures arising from pre-trial suppression hearings, the Rules promote the speedy and effective enforcement of the criminal laws, ensure swift convictions deterring crime, see A. von Hirsch, *Doing Justice* (1976), and avoid unnecessary expenditures of public funds and judicial resources.<sup>28</sup>

27. The danger that publicity may deter the accused from exercising his right to suppress evidence and hamper the ability of our state system of criminal justice to afford the accused a fair trial is serious and continuing. Justice Frankfurter observed:

"Not a Term passes without this Court being importuned to review convictions, had in States throughout the country, in which substantial claims are made that a jury trial has been distorted because of inflammatory newspaper accounts—too often, as in this case, with the prosecutor's collaboration—exerting pressures upon potential jurors before trial and even during the course of trial, thereby making it extremely difficult, if not impossible, to secure a jury capable of taking in, free of prepossessions, evidence submitted in open court."

*Irvin v. Dowd*, 366 U. S. 717, 729, 81 S. Ct. 1639, 1646 (Frankfurter, J., concurring).

28. Indeed, the Commonwealth agreed to each defendant's request for special orders in these cases of widespread interest.

Significantly, the orders here challenged were requested by the defendants. Rule 323(f), upon which the orders were based, provides that only a defendant may request a closed suppression hearing to protect his constitutional rights. See *Commonwealth v. Bennett*, 445 Pa. 8, 11-12 n. 3, 282 A. 2d 276, 278 n. 3 (1971), following *United States ex rel. Bennett v. Rundle*, 419 F. 2d 599 (3rd Cir. 1969) (court's sua sponte closure of suppression hearing violated defendant's right to public trial). This provision denies the prosecution the power to prevent disclosure of information concerning a criminal case, "gag" participants in the proceeding, or deprive an accused his right to open judicial proceedings. See note 8 *supra* (use of Rules 326 & 327).

Cases from federal courts of appeals demonstrate the importance of focusing on the defendant's protection of his constitutional rights. In *Chase v. Robson*, 435 F. 2d 1059 (7th Cir. 1970), the seventh circuit invalidated an order opposed by the defendants forbidding the defendants and attorneys for both prosecution and defense from publicly commenting on the case. See *In re Oliver*, 452 F. 2d 111 (7th Cir. 1971). The order in *Chase* also covered all information about the case, whereas, the challenged orders here involve only pre-trial suppression hearings, generating information most likely to be extremely prejudicial to the accused. See notes 7 & 8 *supra*. Similarly, in *Central South Carolina Chapter v. Martin*, 556 F. 2d 706 (4th Cir. 1977), cert. denied, — U. S. —, — S. Ct. — (1978), the fourth circuit, while it approved a ban on pre-trial discussion of prejudicial matters not of public record specifically noted the defendant was free to seek a modification of the order as it affected him.

Here, respondents entered orders in murder cases of great notoriety. In *Commonwealth v. Boyle*, the defend-

ant is a national figure, accused of a crime of widespread attention. Publicity in this case had already compelled this Court to grant a change of venue. In *Commonwealth v. Palmer* and *Commonwealth v. Phillips*, petitioners averred that the crimes were also of widespread interest in the community. Thus, the challenged orders were aimed at averting a substantial threat to both the fundamental rights of the defendants and the public interest in prompt and orderly administration of criminal justice.

*B. The Orders Imposed Only a Limitation on Access to Pre-trial Suppression Hearings, Carefully Designed to Protect Rights of The Accused and Interests of The Public.*

The orders here are limited to pre-trial suppression hearings, which involve materials likely to be prejudicial to defendants. See *supra* notes 6-8 and accompanying text. In *Central South Carolina Chapter v. Martin*, *supra*, the fourth circuit demonstrated the significance of avoiding pre-trial disclosure of prejudicial information. The court invalidated parts of a pre-trial order prohibiting parties from mingling with the press on sidewalks adjacent to the courthouse and barring artists from sketching jurors, but upheld that part of the order prohibiting extrajudicial statements of participants "which might divulge extrajudicial matter not of public record." In *United States v. Gurney*, 558 F. 2d 1202 (5th Cir. 1977), cert. denied sub nom. *Miami Publishing Co. v. Krentzman*, No. 77-1010, New York Times, April 18, 1978, p. 14, col 4 (U. S.), the fifth circuit reaffirmed the well established rule that even during an open, public trial, a court may limit public access to sidebar and bench conferences. Cf. *Tribe*, *supra* note 18. The same jurisprudential considerations justifying the traditional sidebar rule support our Rules authorizing re-

spondents' pre-trial suppression hearing orders. Here, as in *Martin* and *Gurney*, the orders of respondents carefully preserve the integrity of juror deliberations.

*United States v. Cianfrani*, — F. 2d — (3 Cir. filed March 16, 1978), is not to the contrary. In *Cianfrani*, a panel of the third circuit modified part of a district court order closing a pre-trial hearing where the court determined the admissibility of intercepted statements and other evidence. After the pre-trial hearing, the defendant pleaded guilty. Thus, the panel was not presented with a case where such orders were necessary to preserve the defendant's right to a fair trial. Nor do we reach a conclusion contrary to *CBS, Inc. v. Young*, 522 F. 2d 234 (6th Cir. 1975), where the sixth circuit invalidated an order forbidding all participants and witnesses from discussing with the press any aspect of a celebrated civil suit. This order was not entered to protect the constitutional rights of any party, and restricted access to all information concerning the case not public, rather than to specific information likely to impede a fair trial.

Further, all three trials have been completed, and the challenged orders may have expired. See Rule 323(g); note 10 *supra* and accompanying text. The statute in *McMullan v. Wohlgemuth*, *supra*, permanently prevented agents of the state from revealing to the press and the public names of any Pennsylvania welfare recipients. This statute, more restrictive than the orders here, was upheld by our Court and the Supreme Court of the United States against an access challenge. 415 U. S. 970, 94 S. Ct. 1547 (1974), dismissing for want of a substantial federal question, 453 Pa. 147, 308 A. 2d 888 (1973). Similarly, in *Garrett v. Estelle*, 556 F. 2d 1274 (5th Cir. 1977), prison regulations permissibly denied newsmen the right to film executions for broadcast, depriving the public of certain

information about these events. See *Holden v. Minnesota*, 137 U. S. 483, 11 S. Ct. 143 (1890) (upholding statute excluding reporters from scene of execution despite request by condemned man). The challenged orders imposed only a limitation on access to pre-trial suppression hearings, no greater than necessary to accomplish their purpose. Accord, *United States v. Gurney*, *supra* (upholding district court order limiting access to side bar conferences).

Moreover, the Rules and orders here do not contain the inherent ambiguities and potential for chilling condemned in *Nebraska Press*. When the court closes a pre-trial suppression hearing, there are no injunctions forbidding publication or requiring the press to guess at what it may or may not print. Thus, the judgment of the newspaper editor remains unimpaired. Compare *Nebraska Press Ass'n v. Stuart*, *supra* (certain information arguably, but not certainly, included in prohibition against publication), and *Miami Herald Publishing Co. v. Tornillo*, 418 U. S. 241, 256-57, 94 S. Ct. 2831, 2839 (1974) ("right of reply" statute impermissibly infringed on editor's discretion), with *Pittsburgh Press Co. v. Pennsylvania Human Relations Commission*, 413 U. S. 376, 93 S. Ct. 2553 (1973) (upholding prohibition against sex-classified advertising where discriminatory hiring was unlawful and editor could easily determine from face of advertisement if it was forbidden), and *Pell v. Procunier*, *supra* (editors not forbidden to print any information gathered in prison).

#### C. No Other State Procedural Device Eliminates Prejudicial Disclosure

Courts in the past have attempted to deal with prejudicial disclosure by lengthy voir dire of potential jurors, extensive continuances, burdensome sequestration, and

cautionary instructions. Because these techniques do not eliminate prejudicial disclosure, but only may reduce some of its effects, all have proven unsatisfactory in many cases. Only one other method, change of venue, may in some cases put a case beyond the physical range of disclosure, but it may not be effective in cases of statewide or national attention, such as *Commonwealth v. Boyle*, or *Estes v. Texas*, 381 U. S. 532, 85 S. Ct. 1628 (1965). Further, pre-trial publicity may follow a case to its new venue.

Through voir dire, a court attempts to minimize the effect of pre-trial publicity by excluding from the jury those whom publicity has biased. But it cannot hope to eliminate all jurors who have been exposed to prejudicial information. In a highly publicized case, effective voir dire may distort the composition of the jury by screening out all those who take an active interest in news and public affairs. Neither a defendant nor the Commonwealth has an interest in seating such a jury. Other methods of dealing with prejudicial disclosure, such as sequestration, continuances, or cautionary instructions to the jury, do not realistically reduce premature prejudicial disclosure to which a jury is exposed.

Finally, many of the methods for eliminating the effects of prejudicial disclosure have other drawbacks. A continuance allows evidence to become stale and lengthens the period during which charges remain unresolved and the accused confined or held on bail pending disposition of the charges. Cf. *Gerstein v. Pugh*, 420 U. S. 103, 114, 95 S. Ct. 854, 863 (1975) (restraints on liberty caused by prolonged detention). Changes of venue and sequestration pose further problems of administration for courts and inconvenience for all persons connected with a case.

A rule of general application directly meeting the problem of prejudicial disclosure is indeed an appropriate

procedural device for the administration of a state court system of criminal justice. The Rules and orders challenged here meet that need by temporarily limiting access to pre-trial proceedings most likely to involve prejudicial material which, if disclosed, could deprive the defendant of a fair trial and impose unneeded burdens on the public and the judicial system. The challenged orders protected the defendants from disclosure by attorneys and witnesses participating in suppression hearings under Rule 323. Such disclosures can be just as prejudicial as public exposure of the proceedings.<sup>29</sup> Short of gagging the press, which is presumed to be unconstitutional, *Oklahoma Publishing Co. v. District Court*, *supra*; *Nebraska Press Ass'n v. Stuart*, *supra*, or permanently depriving the press access

29. Petitioners also asserted that the orders entered by respondents directing participants in the pre-trial proceedings not to discuss the proceedings were overbroad. We did not agree.

"[A] governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms." *NAACP v. Alabama*, 377 U. S. 288, 307, 84 S. Ct. 1302, 1314 (1964), quoted in *Zwickler v. Koota*, 389 U. S. 241, 88 S. Ct. 391 (1967). A challenge solely to the breadth of a governmental regulation recognizes the lawfulness of the type of regulation; it attacks only the extent of the limitation as insufficiently related to the legitimate governmental interest.

The orders directing participants in the pre-trial proceedings not to discuss the proceedings, like the other orders, were designed to prevent harm to the accused's right to a fair trial and the public interest in prompt, orderly, and final administration of criminal justice by temporarily limiting access to information which might produce undue publicity. See notes 7 & 8 *supra*. If a participant could describe the events of the pre-trial proceedings, the court's other orders would be rendered useless.

Hence, respondents, through the Rules, had to be able to control the disclosures of every participant in those proceedings. We therefore conclude that the portions of these orders restricting comment upon the suppression hearings by participants were as closely tailored to eliminating prejudicial publicity as were the portions closing the suppression hearings and impounding the records thereof. Therefore, these portions of the orders cannot be considered overbroad.

to all information about a case, we believe our Rules and these orders are the most effective means of reducing premature prejudicial disclosure.

#### VI. CONCLUSION

This Court is fully aware of the great societal benefits our citizenry derives from access to all open court proceedings. Manifestly, that freedom has and continues to contribute significantly to the attainment of the effective administration of justice.

We must also be mindful of the Commonwealth's obligation to protect the right of the accused to a constitutionally required fair and speedy trial. Similarly, it must be recognized that the Commonwealth entertains a traditionally strong interest in protecting the fairness and integrity of criminal convictions obtained in its court system.

Adequate consideration must also be accorded the very pronounced public interest in having its system of criminal justice function so that jury trials are conducted promptly, fairly, and with finality. Due recognition must be given rules and procedures designed to achieve prompt and fair trials without the hazards of imposing on the state court system unnecessary and avoidable burdens such as retrials and extended trial delays. This is the true mission of the Rules of Criminal Procedure.

Experience has plainly demonstrated that premature disclosure of pre-trial suppression material creates a heavy and unnecessary burden upon the judicial process and adversely affects these public interests. Rules 323, 326 and 327 authorize a court in an appropriate case, if necessary, to limit or postpone access to pre-trial suppression hearing material so that the case may proceed in an orderly and timely fashion in an atmosphere free from the hazards and

prejudice which may be engendered by the premature disclosure of suppression material, the admissibility of which is yet to be judicially determined. It must be concluded here that the public interest in avoiding unfair and delayed trials and retrials outweighed the postponement of petitioners' access.

We concluded on the record as presented by petitioners that respondents' orders, which limited access to pre-trial suppression hearings in murder cases which had received great public attention, did not deny petitioners any clear legal right. We therefore denied petitioners the state remedies they sought. See *Central South Carolina Chapter v. Martin*, *supra*; *United States v. Gurney*, *supra*; but see *State ex rel. Dayton Newspapers, Inc. v. Phillips*, 351 N. E. 2d 127 (Ohio 1976). These orders were entered pursuant to the Pennsylvania Rules of Criminal Procedure, a set of state rules designed to administer criminal justice fairly and efficiently. The orders were closely tailored to meet the problems of prejudicial disclosure resulting from suppression hearings.

Accordingly, special relief was properly denied petitioners and our orders are reinstated in conformity with this opinion.

Mr. Justice Packel did not participate in the consideration of this opinion.

### EXHIBIT 3.

IN THE  
SUPREME COURT OF PENNSYLVANIA  
EASTERN DISTRICT

No. 384 Misc. Docket 21

Petition for Writ of Mandamus and Prohibition  
Petition for Plenary Jurisdiction  
Petition for Expedited Hearing

PHILADELPHIA NEWSPAPERS, INC., et al.,  
*Petitioners*

v.

THE HONORABLE DOMENIC D. JEROME

No. 399 Misc. Docket 21

Petition for Writ of Mandamus and Prohibition  
Petition for Assumption and Plenary Jurisdiction

EQUITABLE PUBLISHING COMPANY, INC., et al.,  
*Petitioners*

v.

THE HONORABLE ROBERT W. HONEYMAN

*Exhibit 3*

No. 400 Misc. Docket 21

Petition for Review in Nature of Prohibition  
 Application for Assumption of Plenary Jurisdiction

MONTGOMERY PUBLISHING COMPANY,  
*Petitioner*  
*v.*

THE HONORABLE ROBERT W. HONEYMAN

No. 401 Misc. Docket 21

Application for Assumption of Plenary Jurisdiction

MONTGOMERY PUBLISHING COMPANY,  
*Petitioner*  
*v.*

THE HONORABLE ROBERT W. HONEYMAN

No. 406 Misc. Docket 21

Petition for Writ of Mandamus and Prohibition  
 Petition for Assumption of Plenary Jurisdiction

EQUITABLE PUBLISHING COMPANY, et al.,  
*Petitioners,*  
*v.*

THE HONORABLE LAWRENCE A. BROWN

*Exhibit 3*

No. 407 Misc. Docket 21

Petition for Review in Nature of Prohibition  
 Application for Assumption of Plenary Jurisdiction

MONTGOMERY PUBLISHING COMPANY,  
*Petitioner*  
*v.*

THE HONORABLE LAWRENCE A. BROWN

**Notice of Appeal.**

Notice is hereby given that Philadelphia Newspapers, Inc., Montgomery Publishing Company, The Associated Press, Central States Publishing, Inc., The Pennsylvania Newspaper Publishers Association, The Pennsylvania Society of Newspaper Editors, and Society of Professional Journalists, Sigma Delta Chi, Greater Philadelphia Chapter, Petitioners above named, hereby appeal pursuant to 28 U. S. C. § 1257(2) to the Supreme Court of the United States from the reinstatement, by Opinion dated April 28, 1978, reinstating the judgments herein vacated by the United States Supreme Court by Judgment dated February 7, 1978.

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